

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STEVEN HARRIS and GARRY CAMPBELL,

Plaintiffs,

v.

BLUERAY TECHNOLOGIES
SHAREHOLDERS, INC., et al.,

Defendants.

No. CV-07-342-FVS

ORDER DISMISSING FEDERAL
CLAIM AND REMANDING STATE
CLAIMS TO STATE COURT

THIS MATTER comes before the Court based, in part, upon the defendants' motion for summary judgment on the issue of standing. The defendants are represented by Stephen Schneider; the plaintiffs by Jeffry K. Finer.

BACKGROUND

During the nineteen nineties, Otis Associates Limited Partnership ("OALP") purchased a building in Spokane, Washington, known as the "Commercial Building." Part of the building was divided into apartments. OALP decided to participate in the Section 8 housing program. See 42 U.S.C. § 1437f. "'Section 8' refers to Section 8 of the United States Housing Act of 1937, which was added by the Housing and Community Development Act of 1974, Pub.L. No. 93-383, § 201(a), 88 Stat. 633, 662-66 (codified as amended at 42 U.S.C. § 1437f)."

Feemster v. BSA Limited Partnership, 548 F.3d 1063, 1064 n.1

1 (D.C.Cir.2008). OALP entered into a housing assistance payments
2 contract ("HAP contract") with the Spokane Housing Authority ("the
3 SHA"). In essence, OALP agreed to lease apartments in the Commercial
4 Building to homeless persons in exchange for assistance payments from
5 the SHA. The assistance payments were funded by the Department of
6 Housing and Urban Development ("HUD").¹ Each year for many years,
7 OALP and the SHA renewed their HAP contract.

8 The persons who lived in the Commercial Building typically
9 suffered from both medical and psychological problems. The president
10 of OALP, Jim Delegans, established programs to meet some of their
11 needs. For example, he arranged for a nurse to visit them. This was
12 not the only reason why the tenants valued living in the Commercial
13 Building. Another was its location. Tenants had ready access to
14 public transportation, upon which many of them depended.

15 As it turned out, the Commercial Building was not a profitable
16 investment for OALP. During 2006, OALP defaulted on a debt to a
17 creditor. The debt was secured by a deed of trust on the Commercial
18 Building. The creditor commenced non-judicial foreclosure proceedings
19 under the State of Washington's Deeds of Trust Act, chapter 61.24 RCW.
20 In due course, the trustee scheduled a trustee's sale.

21 The 2006-2007 HAP contract was set to expire on March 31, 2007.
22 Despite the fact the Commercial Building was the subject of non-

23
24 ¹At the Court's request, the parties have submitted a
25 document that is entitled "Joint Stipulated and Disputed Facts."
26 It mentions assistance payments, but does not indicate whether
OALP received other financial incentives for participating in the
Section 8 program.

1 judicial foreclosure proceedings, OALP attempted to renew its HAP
2 contract with the SHA. Although the record is not entirely clear, it
3 does not appear Mr. Delegans disclosed the existence of non-judicial
4 foreclosure to the SHA. In any event, the SHA agreed to renew the
5 contract. On March 14th, Mr. Delegans signed a new contract on behalf
6 of OALP. On March 27th, Steve Cervantes signed on behalf of SHA.

7 On April 13th, the trustee conducted the trustee's sale. Pacific
8 First West, LLC, submitted the highest bid. The trustee issued a
9 deed. Shortly thereafter, BlueRay LLC purchased Pacific First West.
10 The new owners of the Commercial Building decided not to participate
11 in the Section 8 housing program. They notified the SHA, which began
12 looking for new apartments for the building's Section 8 tenants. HUD
13 was aware of the new owners' decision and did not object.

14 By the end of July, the SHA had arranged for all of the Section 8
15 tenants to move to new apartments. HUD provided, and continues to
16 provide, assistance to those tenants who are eligible. During
17 October, two former tenants of the Commercial Building, Stephen Harris
18 and Garry Campbell, filed an action in state court. The defendants
19 removed the matter to federal court based upon the existence of a
20 federal question. 28 U.S.C. §§ 1441, 1446. The plaintiffs have
21 amended their complaint. As amended, the plaintiffs' complaint names
22 three defendants. They are Pacific First West LLC, BlueRay LLC, and
23 BlueRay Technologies Shareholders, Inc. The latter is the managing
24 member of Pacific First West.

25 The plaintiffs' complaint contains three causes of action. The
26 first is based, in part, upon 42 U.S.C. § 1437f(c)(8). This section

1 is divided upon four parts, viz., (8) (A)-(8) (D). The first sentence
2 of subsection (8) (A) states, "Not less than one year before
3 termination of any contract under which assistance payments are
4 received under this section, other than a contract for tenant-based
5 assistance under this section, an owner shall provide written notice
6 to the Secretary and the tenants involved of the proposed
7 termination." 42 U.S.C. § 1437f(c) (8) (A). Congress anticipated an
8 owner might not fulfill his obligations under § 1437f(c) (8) (A):

9 In the event the owner does not provide the notice required,
10 the owner may not evict the tenants or increase the tenants'
11 rent payment until such time as the owner has provided the
12 notice and 1 year has elapsed. The Secretary may allow the
13 owner to renew the terminating contract for a period of time
sufficient to give tenants 1 year of advance notice under
such terms and conditions as the Secretary may require.

14 42 U.S.C. § 1437(c) (8) (B). The plaintiffs allege the defendants
15 violated § 1437f(c) (8) (B) by evicting them from their apartments
16 without providing the one-year notice required by § 1437f(c) (8) (A).

17 JURISDICTION

18 The defendants raise two jurisdictional issues. One is whether
19 the plaintiffs have standing to bring an action in federal court. See
20 *Pershing Park Villas Homeowners Ass'n v. United Pac. Ins. Co.*, 219
21 F.3d 895, 899 (9th Cir.2000) ("standing concerns whether the
22 plaintiff's personal stake in the lawsuit is sufficient to make out a
23 concrete 'case' or 'controversy' to which the federal judicial power
24 may extend under Article III, § 2"). Another is whether the
25 plaintiffs' amended complaint contains a cause of action that arises
26 under the laws of the United States. 28 U.S.C. § 1331. The Supreme

1 Court has specified the order in which those issues must be resolved.
2 The first is whether the plaintiffs have standing. *Steel Co. v.*
3 *Citizens for a Better Env't*, 523 U.S. 83, 88-89, 101, 118 S.Ct. 1003,
4 1009, 1016, 140 L.Ed.2d 210 (1998) (standing is a threshold issue; one
5 a court must resolve before determining whether the plaintiff has a
6 cause of action under the Constitution or laws of the United States).
7 If the plaintiffs have standing, the second issue is whether a federal
8 question exists. *In re Digimarc Corp. Derivative Litigation*, 549 F.3d
9 1223, 1229 (9th Cir.2008).

10 **STANDING**

11 The jurisdiction of a federal court is limited to actual cases
12 and controversies. U.S. Const. art. III, § 2, cl. 1. This limitation
13 is given effect by requiring a litigant to establish standing before
14 invoking a federal court's authority. *See Allen v. Wright*, 468 U.S.
15 737, 750-51, 104 S.Ct. 3315, 3324, 82 L.Ed.2d 556 (1984). At its
16 "irreducible constitutional minimum," standing requires proof of three
17 things. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct.
18 2130, 2136, 119 L.Ed.2d 351 (1992) (citations omitted). "First, the
19 plaintiff must have suffered an 'injury in fact'" *Id.*
20 (citations omitted). "Second, there must be a causal connection
21 between the injury and the conduct complained of -- the injury has to
22 be 'fairly traceable to the challenged action of the defendant, and
23 not the result of the independent action of some third party not
24 before the court.'" *Id.* at 560-61, 112 S.Ct. at 2136 (quoting *Simon*
25 *v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41-42, 96 S.Ct.
26 1917, 1926, 48 L.Ed.2d 450 (1976)) (internal punctuation omitted).

1 "Third, it must be likely, as opposed to merely 'speculative,' that
2 the injury will be 'redressed by a favorable decision.'" *Id.* at 561,
3 112 S.Ct. at 2136 (quoting *Simon*, 426 U.S. at 38, 43, 96 S.Ct. at
4 1924, 1926). The defendants move for summary judgment on the issue of
5 standing. "In response to a summary judgment motion . . . , a
6 plaintiff can no longer rest on 'mere allegations' but must set forth
7 by affidavit or other admissible evidence 'specific facts' as
8 delineated in Federal Rule of Civil Procedure 56(e) as to the
9 existence of such standing." *Gerlinger v. Amazon.com Inc., Borders*
10 *Group, Inc.*, 526 F.3d 1253, 1255-56 (9th Cir.2008) (quoting *Lujan*, 504
11 U.S. at 561, 112 S.Ct. at 2137).

12 A. Injury-in-Fact

13 The plaintiffs allege the defendants violated § 1437f(c)(8) by,
14 first, failing to provide notice and, then, by forcing them to vacate
15 their apartments. The defendants do not deny requiring the plaintiffs
16 to vacate their apartments in the Commercial Building. Nor do the
17 defendants deny the plaintiffs have suffered inconveniences as a
18 result. For example, the plaintiffs' new landlords do not provide the
19 services Mr. Delegans did. They must travel across town to obtain the
20 same services; which can be difficult, at times, because their new
21 apartments are not as close to bus stops as were their former
22 apartments. Not only that, but also they have lost the psychological
23 support that came from being part of a community of Section 8 tenants
24 in the Commercial Building. However, according to the defendants,
25 inconvenience is not injury. They submit the plaintiffs are entitled
26 to one thing under 42 U.S.C. § 1437f; namely, federal housing

1 assistance that enables them to have "a decent place to live." 42
2 U.S.C. § 1437f(a). As the defendants point out, the plaintiffs have
3 never been deprived of apartments or federal housing assistance. That
4 being the case, say the defendants, the plaintiffs have not suffered a
5 cognizable injury. For their part, the plaintiffs concede the SHA
6 found them new apartments. They also concede mere inconvenience is
7 not an injury in fact. Nevertheless, they insist there is evidence of
8 injury that is sufficient to satisfy the first component of Article
9 III standing. Mr. Harris has submitted a declaration alleging his new
10 landlord requires him to pay for the utilities he consumes in his new
11 apartment. He claims he did not have to pay for utilities when he
12 resided in the Commercial Building.

13 "[A]n injury must be a harm that is both concrete and actual or
14 imminent, not conjectural or hypothetical." *Fulfillment Services,*
15 *Inc. v. United Parcel Service, Inc.*, 528 F.3d 614, 618 (9th Cir.2008)
16 (internal punctuation and citations omitted). The Ninth Circuit has
17 not indicated what sorts of circumstances qualify as Article III
18 injuries in the context of an action arising under 42 U.S.C. §
19 1437f(c). Consequently, the defendants have looked elsewhere for
20 persuasive authority. They rely heavily upon both *People to End*
21 *Homelessness, Inc. v. Develco Singles Apts. Assocs.*, 339 F.3d 1 (1st
22 Cir.2003) ("PEH"), and *Baker v. Property Investors of Conn.*, 338
23 F.Supp.2d 321 (D.Conn.2004).

24 In *PEH*, the owners of apartment buildings notified their Section
25 8 tenants they did not intent to renew their HAP contracts. 339 F.3d
26 at 4. The owners provided notice six weeks before the HAP contracts

1 expired. *Id.* HUD did not object to the owners' decision, and agreed
2 to issue housing vouchers to the tenants. *Id.* A nonprofit
3 organization filed an action the day before the HAP contracts expired.
4 *Id.* The organization alleged the owners violated 42 U.S.C. §
5 1437f(c)(8) by failing to provide adequate notice. The organization
6 alleged HUD violated federal law by permitting the owners to do so.
7 *Id.* The district court entered a stipulated restraining order
8 prohibiting the owners from either evicting a Section 8 tenant or
9 increasing his rent payment until the one-year period elapsed. *Id.*
10 The owners complied with the order. In time, the district court
11 dismissed the action. Insofar as the owners were concerned, the court
12 ruled the organization lacked standing to sue them. *Id.* The First
13 Circuit agreed. It concluded the district court had provided all of
14 the redress to which the organization was entitled by entering the
15 restraining order. *Id.* at 9. No other relief the district court was
16 authorized to grant would have redressed the organization's remaining
17 injuries. Thus, the organization lacked standing. *Id.*

18 The other case upon which the defendants rely heavily is *Baker v.*
19 *Property Investors of Conn., supra.* There, an apartment owner decided
20 to opt out of the Section 8 program. Although the owner gave advance
21 notice of its decision to the tenants as required by 42 U.S.C. §
22 1437f(c)(8)(A), *Baker*, 338 F.Supp.2d at 324, HUD allegedly violated
23 that subsection by allowing the owner to terminate the contract 16
24 days before the one-year period elapsed. *Id.* at 327. A group of
25 tenants filed an action against HUD and others. *Id.* at 322. Judge
26 Alan H. Neveas dismissed the plaintiffs' claims against HUD for want

1 of standing. *Id.* at 326. Like the First Circuit before him, he cited
2 the absence of evidence indicating any plaintiff was forced to leave
3 her apartment prior to the expiration of the one-year period. *Id.* at
4 327.

5 This case is distinguishable from *PEH* and *Baker*. Unlike the
6 plaintiffs in those cases, Messrs. Harris and Campbell have presented
7 evidence the defendants forced them to vacate their apartments without
8 providing the notice allegedly required by § 1437f(c)(8)(A). Both *PEH*
9 and *Baker* imply those two circumstances constitute an Article III
10 injury when they occur together; and, indeed, that may be the law.
11 *Cf. Fulfillment Services, Inc.*, 528 F.3d at 618-19 ("The injury
12 required by Article III can exist solely by virtue of statutes
13 creating legal rights, the invasion of which creates standing."
14 (internal punctuation and citations omitted)). However, the Court
15 need not decide. Even assuming the plaintiffs have created jury
16 issues with respect to the first two components of Article III
17 standing, they cannot satisfy the third.

18 B. Redressability

19 The plaintiffs seek two types of relief based upon the
20 defendants' alleged violation of § 1437f(c)(8)(A). One is damages;
21 the other is an injunction. The defendants argue neither type of
22 relief is available. Consequently, in their opinion, the injury
23 alleged by the plaintiffs is not redressable.

24 *1. Damages*

25 The plaintiffs' request for damages is grounded upon §
26 1437f(c)(8)(B); the first sentence of which states, "In the event the

1 owner does not provide the notice required [by § 1437f(c)(8)(A)], the
2 owner may not evict the tenants or increase the tenants' rent payment
3 until such time as the owner has provided the notice and 1 year has
4 elapsed." The preceding language limits a building owner's freedom of
5 action in two ways. Until he complies with § 1437f(c)(8)(A), he may
6 neither evict his Section 8 tenants nor increase their rent payments.
7 However, there is nothing in the text of § 1437f(c)(8)(B) or the
8 regulations promulgated thereto requiring him to pay damages. See,
9 e.g., 24 C.F.R. § 402.8(b) (listing the two tenant protections set
10 forth in the statute). The absence of a damage clause creates a
11 formidable obstacle for Messrs. Harris and Campbell. An injury is not
12 redressable if the statute upon which the plaintiff is relying for a
13 remedy does not provide the specific relief he is seeking. This
14 principle is illustrated by *Steel Co., supra*. There, an environmental
15 group filed a "private enforcement action under the citizen-suit
16 provision of the Emergency Planning and Community Right-To-Know Act of
17 1986 (EPCRA), 100 Stat. 1755, 42 U.S.C. § 11046(a)(1)." 523 U.S. at
18 86, 118 S.Ct. at 1008. The environmental group alleged a company had
19 failed to file certain "hazardous-chemical inventory and toxic-
20 chemical release forms[.]" *Id.* at 87, 118 S.Ct. at 1009. The
21 environmental group sought several types of relief. One was
22 "'investigation costs.'" *Id.* at 107, 118 S.Ct. at 1019. By this, the
23 environmental group meant costs "incurred prior to the litigation, in
24 digging up the emissions and storage information that [the company]
25 should have filed, and that [the group] needed for its own purposes."
26 *Id.* at 107-08, 118 S.Ct. at 1019. The environmental group relied upon

1 a certain section of EPCRA in demanding reimbursement for
2 investigation costs. The problem was, said the Supreme Court, the
3 section of EPCRA cited by the environmental group did not cover the
4 investigation costs the group was seeking. *Id.* at 108, 118 S.Ct. at
5 1019. Thus, while the environmental group may have been injured by
6 the company's failure to comply with EPCRA, there was no redress for
7 investigation costs under the statute upon which the group relied.
8 *Id.* So, too, here. Section 1437f(c)(8)(B) does not authorize
9 damages. Thus, the injuries Messrs. Harris and Campbell have suffered
10 as a result of the defendants' alleged violation of § 1437f(c)(8) are
11 not redressable by means of a judgment ordering the defendants to pay
12 damages.²

13 2. Injunction

14 The other form of redress the plaintiffs seek is an injunction.³
15 They want persons who resided in the Commercial Building pursuant to
16 the Section 8 program to have the option of reoccupying their
17 apartments until such time as the defendants comply with 42 U.S.C. §

18 ²The plaintiffs do not allege the defendants increased their
19 rent payments in violation of § 1437f(c)(8)(B). As a result, the
20 Court need not decide whether it has equitable authority to order
21 the defendants to reimburse unlawfully collected rent. *Cf. In re*
22 *Digimarc Corp. Derivative Litigation*, 549 F.3d at 1233 (§ 304 of
23 the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7243, expressly
requires a wrongdoer to disgorge his "ill-gotten gains").

24 ³The plaintiffs appear to be alleging they are victims of a
25 continuing violation of § 1437f(c)(8). *Cf. Steel Co.*, 523 U.S.
26 at 108, 118 S.Ct. at 1019 ("If respondent had alleged a
continuing violation or the imminence of a future violation, the
injunctive relief requested would remedy that alleged harm.").

1 1437f(c)(8)(A). Like the plaintiffs' request for damages, their
2 request for an injunction is based upon § 1437f(c)(8)(B). The
3 defendants dispute the plaintiffs' reading of subsection (8)(B). They
4 claim Section 8 tenants do not have a legal right to reoccupy their
5 former apartments in the Commercial Building.

6 The parties' conflicting interpretations of § 1437f(c)(8)(B)
7 raise an issue of statutory construction. The process of construing a
8 statute begins with its language. *Greyhound Corporation v. Mt. Hood*
9 *Stages, Inc.*, 437 U.S. 322, 330, 98 S.Ct. 2370, 2375, 57 L.Ed.2d 239
10 (1978); *Ordlock v. Commissioner of Internal Revenue*, 533 F.3d 1136,
11 1140 (9th Cir.2008). The first step is to "determine whether the
12 language at issue has a plain and unambiguous meaning with regard to
13 the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519
14 U.S. 337, 340, 117 S.Ct. 843, 846, 136 L.Ed.2d 808 (1997). The Court
15 "'must look to the particular statutory language at issue, as well as
16 the language and design of the statute as a whole.'" *McCarthy v.*
17 *Bronson*, 500 U.S. 136, 139, 111 S.Ct. 1737, 1740, 114 L.Ed.2d 194
18 (1991) (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 108
19 S.Ct. 1811, 1817, 100 L.Ed.2d 313 (1988)).

20 The defendants acknowledge the first sentence of subsection
21 (8)(B) states, "In the event the owner does not provide the notice
22 required, the owner may not evict the tenants or increase the tenants'
23 rent payment until such time as the owner has provided the notice and
24 1 year has elapsed." 42 U.S.C. § 1437f(c)(8)(B). This provision
25 seems fairly clear. Among other things, it says a building owner who
26 fails to comply with § 1437f(c)(8)(A) may not evict a Section 8 tenant

1 until he rectifies his error. Arguably, a district court may enter a
2 restraining order protecting a Section 8 tenant from eviction in
3 violation of § 1437f(c)(8)(B). See, e.g., *PEH*, 339 F.3d at 8-9.

4 As the defendants point out, subsection (8)(B) contains a second
5 sentence. "The Secretary may allow the owner to renew the terminating
6 contract for a period of time sufficient to give tenants 1 year of
7 advance notice under such terms and conditions as the Secretary may
8 require." *Id.* The defendants argue the subsection's two sentences
9 must be read together, which is true. See *United States v. Morton*,
10 467 U.S. 822, 828, 104 S.Ct. 2769, 2773, 81 L.Ed.2d 680 (1984) ("We do
11 not . . . construe statutory phrases in isolation; we read statutes
12 as a whole."). In the defendants' opinion, the first sentence is
13 conditioned upon the second sentence. That is to say, tenants are
14 protected from eviction and/or rent-payment increases (first sentence)
15 only if HUD decides to renew the owner's HAP contract (second
16 sentence). Should HUD decline to do so, say the defendants, the
17 tenants do not have a right to remain in their apartments.⁴

18 If the defendants' interpretation of § 1437f(c)(8)(B) is correct,
19

20 ⁴In *PEH*, the First Circuit concluded Congress' determination
21 that HUD "'may allow' the owner to renew [a] . . . HAP contract[]
22 makes it apparent that HUD [i]s not required to renew [a] . . .
23 Section 8 HAP contract[], even in the face of a notice
24 violation." 339 F.3d at 5. There is no reason to think the
25 Ninth Circuit will reject the First Circuit's interpretation of §
26 1437f(c)(8)(B). Thus, the defendants are at least partially
correct. HUD has discretion to determine whether to renew a HAP
contract when an apartment owner does not comply with §
1437f(c)(8)(A).

1 one would expect to find language making the first sentence (tenant
2 protections) dependent upon the second sentence (HUD renewal of an
3 expiring HAP contract). However, subsection (8)(B) does not contain
4 any such language. Instead, the two sentences appear together in the
5 same subsection without any indication Congress intended to make the
6 first sentence dependent upon the second. Why would Congress craft
7 subsection (8)(B) in that manner?

8 Section 1437f(c)(8)(B) is triggered when a building owner
9 terminates a HAP contract without complying with § 1437f(c)(8)(A).
10 The first sentence of § 1437f(c)(8)(B) places a financial burden upon
11 the owner in such situations. Now that he has terminated his HAP
12 contract, he no longer receives HUD-funded rent subsidies for his
13 Section 8 tenants. He might be willing to accept the loss of this
14 revenue if he could replace it by increasing his Section 8 tenants'
15 rent payments or, in the alternative, by evicting them and seeking
16 tenants who are willing to pay higher rent; but he cannot take either
17 of those steps. He must retain his Section 8 tenants and be satisfied
18 with their limited incomes until he complies with § 1437f(c)(8)(A).
19 Faced with this financial reality, he may reconsider his decision to
20 terminate the HAP contract. If he's willing to do so, HUD has
21 authority to help him. HUD may renew the HAP contract "for a period
22 of time sufficient to give tenants 1 year of advance notice[.]"

23 The structure of § 1437f(c)(8)(B) suggests Congress intended to
24 enforce § 1437f(c)(8)(A) by means of a stick-and-carrot technique.
25 The first sentence of subsection (8)(B) is the stick. An owner who
26 terminates a HAP contract without providing the notice required by §

1 1437f(c)(8)(A) may not evict his Section 8 tenants or increase their
2 rent payments. The second sentence is the carrot. An owner who
3 reconsiders his decision to terminate a HAP contract may obtain rent
4 subsidies from HUD until such time as he provides the notice to which
5 his Section 8 tenants are entitled.

6 The defendants disagree with the assertion Congress enacted §
7 1437f(c)(8)(B) in order to ensure Section 8 tenants receive the notice
8 required by § 1437f(c)(8)(A). The defendants submit the purpose of §
9 1437f(c)(8), in general, and subsection (8)(B), in particular, is to
10 ensure Section 8 tenants receive federal housing assistance in the
11 event a building owner terminates a HAP contract. In the defendants'
12 opinion, it is up to HUD to decide what type of assistance to provide.
13 If HUD decides to renew the HAP contract, the owner must abide by the
14 limitations that are set forth in the first sentence of subsection
15 (8)(B). Otherwise, the owner is free to do as he pleases. Put
16 somewhat differently, the tenant protections established by the first
17 sentence apply only if two contingencies occur: HUD offers to renew
18 the now-expired HAP contract, and the owner accepts. If HUD decides
19 not to make an offer, or if the owner rejects HUD's offer, the
20 protections are inapplicable.

21 The defendants' interpretation of § 1437f(c)(8)(B) would
22 transform the statute by eliminating the stick. On their reading, an
23 owner who fails to comply with § 1437f(c)(8)(A) would be under no
24 financial pressure to ask HUD to extend the HAP contract until he
25 provides notice. Instead, it would be up to HUD to contact the owner
26 and attempt to persuade him to accept an offer of renewal. (And what

1 financial incentive would an owner have to accept an offer from HUD?
2 In all probability, he would make more money by rejecting HUD's offer,
3 evicting his Section 8 tenants, and renting his apartments to persons
4 who are willing to pay more.)

5 There is nothing in the structure of subsection (8)(B) indicating
6 Congress intended the statute to operate in the manner proposed by the
7 defendants. To the contrary, it is likely Congress said what it meant
8 and meant what it said. "In the event the owner does not provide the
9 notice required [by § 1437f(c)(8)(A)], the owner may not evict the
10 tenants or increase the tenants' rent payment until such time as the
11 owner has provided the notice and 1 year has elapsed." 42 U.S.C. §
12 1437f(c)(8)(B). Granted, a noncompliant owner may seek financial
13 relief from HUD. "The Secretary may allow the owner to renew the
14 terminating contract for a period of time sufficient to give tenants 1
15 year of advance notice under such terms and conditions as the
16 Secretary may require." *Id.* Nevertheless, whether or not HUD renews
17 the HAP contract, a noncompliant owner may not deprive his Section 8
18 tenants of the protections set forth in § 1437f(c)(8)(B).

19 The plaintiffs argue a district court may enforce the above-
20 quoted tenant protections by issuing an injunction ordering a
21 noncompliant building owner to allow wrongfully evicted Section 8
22 tenants to reoccupy their former apartments. The plaintiffs may be
23 correct. *Cf. PEH*, 339 F.3d at 8-9 (assuming, without deciding, a
24 district court had authority to issue a restraining order).
25 Nevertheless, in this case, injunctive relief will not remedy the
26 plaintiffs' alleged injuries. To begin with, an injunction may be

1 futile. As they conceded during oral argument, the Commercial
2 Building has been substantially remodeled; their former apartments no
3 longer exist in the same state they did when they left. *Cf. In re*
4 *Estate of Ferdinand Marcos Human Rights Litig.*, 94 F.3d 539, 545 (9th
5 Cir.1996) (a "court should not issue an unenforceable injunction").
6 The Court need not address the issue of futility at this time because
7 the defendants have not raised it. However, the defendants have
8 raised an equally important issue. Neither plaintiff seeks to return
9 to the Commercial Building. During Mr. Harris' deposition, the
10 following exchange took place:

11 Q. If you're successful in this lawsuit, if the judge rules
12 in your favor, are you going to move back into the
Commercial Building?

13 A. No, sir.

14 (Deposition of Stephen J. Harris on July 17, 2009, at 47.) A similar
15 exchange took place during Mr. Campbell's deposition:

16 Q. [W]hat do you want the court to do should you prevail in
this lawsuit?

17 A. I'd like the court to understand . . . I need to get my
18 \$100 deposit back, and understand that it is just not right
19 to go into somebody's house and given them 30 days to move
out. . . .

20

21 Q. So I just want to make sure I've got your full answer.
22 So you've said you want the court to award you a hundred
dollars, and tell everybody that it was wrong for you to get
23 a 30-day notice. Is there anything else you want the court
to do for you?

24 A. Well, the 30-day notice isn't what's wrong. What's wrong
is evicting low income people that have no place else to go.

25

(Deposition of Garry W. Campbell on June 30, 2009, at 37, 38.⁵) In view of the plaintiffs' answers during their depositions, it is clear neither man wants to reside in his former apartment. How, then, would either one benefit from an injunction? Perhaps he would derive "psychic satisfaction" from seeing "that a wrongdoer gets his just deserts[] or that the Nation's laws are faithfully enforced[,]" *Steel Co.*, 523 U.S. at 107, 118 S.Ct. at 1019; but satisfaction of that sort "is not an acceptable Article III remedy[.]" *Id.* In fact, an injunction is worthless to the plaintiffs as neither man wants to return to the Commercial Building; assuming, of course, his former apartment exists. Thus, the plaintiffs' alleged injuries will not be redressed by an injunction. See *Steel Co.*, 523 U.S. at 107, 118 S.Ct. at 1019 ("Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.").

C. Conclusion Regarding Standing

The first two components of Article III standing are injury-in-fact and causation. See *Steel Co.*, 523 U.S. at 102-03, 118 S.Ct. at 1016-1017. The plaintiffs have presented evidence indicating the defendants forced them to vacate their apartments in the Commercial Building without providing the notice § 1437f(c)(8)(A) requires. The Court assumes, without deciding, genuine issues of material fact exist with respect to the first two components of Article III standing. The

⁵Copies of the relevant pages of the Harris and Campbell depositions are attached to the "Declaration of Steven Schneider." This declaration is court record number 167.

1 third component is redressability. See *Steel Co.*, 523 U.S. at 102-03,
2 118 S.Ct. at 1016-1017. The plaintiffs request two things under §
3 1437f(c)(8)(B): damages and an injunction. They are not entitled to
4 damages, and they forthrightly acknowledge they do not seek to return
5 to their apartments. As a result, they will gain nothing tangible
6 from an injunction other than, perhaps, some "psychic satisfaction"
7 from having the Court declare the defendants violated § 1437f(c)(8).
8 Since none of the relief the plaintiffs request pursuant to §
9 1437f(c)(8)(B) will remedy their alleged injuries, they cannot
10 establish redressability. It follows they lack standing to maintain
11 an action under 42 U.S.C. § 1437f(c)(8). The Court must dismiss their
12 first and second causes of action to the extent they depend upon that
13 statute.

14 **STATE LAW CLAIMS**

15 All three of the plaintiffs' causes of action are based, in part,
16 upon the law of the State of Washington. The Court may exercise
17 supplemental jurisdiction over the plaintiffs' state claims if they
18 are so related to the plaintiffs' federal claim "they form part of the
19 same case or controversy under Article III of the United States
20 Constitution." 28 U.S.C. § 1367(a). However, the Court is not
21 obligated to exercise supplemental jurisdiction. *Acri v. Varian*
22 *Associates, Inc.*, 114 F.3d 999, 1000-01 (9th Cir.1997) (en banc). In
23 determining whether to retain or decline jurisdiction, the Court has
24 considered the four factors listed in 28 U.S.C. § 1367(c):

- 25 (1) the claim raises a novel or complex issue of State law,
26 (2) the claim substantially predominates over the claim or claims
over which the district court has original jurisdiction,

1 (3) the district court has dismissed all claims over which
2 it has original jurisdiction, or

3 (4) in exceptional circumstances, there are other compelling
4 reasons for declining jurisdiction.

5 Furthermore, at oral argument, the Court asked the parties whether it
6 should exercise supplemental jurisdiction if it dismissed the
7 plaintiffs' federal claim. Both sides agreed the Court should remand
8 the plaintiffs' state claims to state court in that event. Given the
9 parties' joint request, and given the factors set forth in § 1367(c),
10 the Court declines to exercise supplemental jurisdiction over the
11 plaintiffs' state claims.

12 **IT IS HEREBY ORDERED:**

13 1. The plaintiffs' motion for partial summary judgment (**Ct. Rec.**
14 **66**) is **denied**.

15 2. The defendants' motion for partial summary judgment (**Ct. Rec.**
16 **77**) is **denied**.

17 3. The defendants' motion to qualify Steve Cervantes as an expert
18 witness under Federal Rule of Evidence 702 (**Ct. 82**) is **denied**.

19 4. The defendants' motion to strike (**Ct. Rec. 98**) is **denied**.

20 5. The defendants' motion for summary judgment on the plaintiffs'
21 first and second causes of action (**Ct. Rec. 101**) is **granted in part**.
22 The plaintiffs' first and second causes of action are dismissed to the
23 extent they are based upon 42 U.S.C. § 1437f(c)(8).

24 6. The plaintiffs' motion to compel discovery (**Ct. Rec. 123**) is
25 **denied**.

26 7. The plaintiffs' motion for summary judgment (**Ct. Rec. 130**) is
denied.

9. The defendants' motion to dismiss (Ct. Rec. 158) is **denied**.

10. The defendants' motion to expedite (**Ct. Rec. 162**) is **denied**.

11. The defendants' motion for leave to file a third-party complaint and for an order bifurcating trial (**Ct. Rec. 164**) is **denied**.

12. The plaintiffs' state claims are remanded to state court.

IT IS SO ORDERED. The District Court Executive is hereby directed to file this order, enter judgment accordingly, furnish copies to counsel, and close the case.

DATED this 23rd day of October, 2009.

s/Fred Van Sickle

Fred Van Sickle
Senior United States District Judge